

Private Admonition - Board Case Nos. 41 and 42, 1995. Date of Sanction: June 16, 1999. A panel of the Preliminary Review Committee of the Board on Professional Responsibility offered the sanction of a private admonition to an attorney in Board Case Nos. 41 and 42, 1998. The attorney consented to the imposition of the private admonition.

In Board Case No. 41, 1998, acting as the executor of an estate, the attorney failed to timely pay inheritance taxes due to the Delaware Division of Revenue. Although the attorney had informed the beneficiary of the estate that the taxes had been paid, the attorney did not issue the check until approximately six weeks later. The Division of Revenue did not receive the estate tax return or the check for the inheritance taxes until two months after the check was issued. By that time, the taxes were almost seven months late and over three months had passed after the Respondent had stated that the tax had been paid. Through other counsel, the client eventually was able to negotiate with the Division of Revenue for abatement of the penalty. The Division of Revenue, however, did not abate the interest. The Respondent admitted that the failure to promptly deliver to the Division of Revenue inheritance taxes constitutes a violation of Delaware Lawyers' Rules of Professional Conduct (DLRPC) 1.3, which provides: "A lawyer shall act with reasonable diligence and promptness in representing a client"; and DLRPC 1.15(b), which provides: "Upon receiving funds or other property in which a client or third person has an interest a lawyer shall promptly deliver to the...third person any funds or other property that the...third person is entitled to receive ..."

Board Case No. 42, 1998 concerns the Respondent's conduct in connection with a representation of a defendant in a criminal matter tried before a jury in the Superior Court. During the jury's deliberations, the client informed the judge that the Respondent previously had represented one of the jurors. The Respondent then informed the judge that the Respondent had represented the juror 15 to 17 years ago on a charge of driving under the influence. The Respondent had recognized and remembered the juror prior to jury selection and had failed to inform the Superior Court. After the jury tendered its verdict, the trial judge interviewed the juror. The juror stated that he had not recognized the Respondent during jury selection, that the Respondent's previous representation of him did not influence his consideration of the pending criminal matter, and that there had been no discussion during the jury deliberation that the Respondent had represented the juror in a prior case. The Superior Court judge determined that the juror was fair and impartial and the case proceeded to sentencing.

As part of consideration of the client's appeal of his conviction, the Supreme Court found that the Respondent's conduct could not be condoned. In failing to bring to the attention of the trial judge a known conflict, the Respondent risked prejudice to the client and compromised the integrity of the jury process and the administration of justice. The Court determined that such conduct is below the standard expected of a member of the Delaware Bar. The Respondent admitted that by failing to bring to the attention of the trial judge a known conflict, thereby risking prejudice to the client and compromising the integrity of the jury process and the administration of justice, the Respondent violated DLRPC 8.4(d), which provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice."